my opinion, relevant for the purpose of evaluating the subject-matter of an appeal from a decision regarding assessment of the annual value of a property for the purpose of rating.

Counsel for the applicants contended that the value of a land would be the subject-matter of a dispute only if the question of ownership or title to the land was in issue. In support of this view he cited the judgment in *Mohamed Hussain and Anor.* v. *Pavadise.*[3] In evaluating the subject-matter in the present case, counsel submitted that the question to be answered is what would be the gain for the applicants for the year of assessment if he had succeeded in the appeal. According to him the gain would be the actual amount of the rate he would not have to pay for the year of assessment. Counsel further submitted that the issues in this case were simple and since respondent had not even filed an affidavit in reply, the bill of costs should be taxed on the lower scale. It would, however, appear from the provisions of Order 65 rule 10 of the Rules of the Supreme Court, that in all cases where the value of the subject-matter of an action, suit or proceeding exceeds $5,000, costs shall be allowed on the higher scale unless the amount recovered fell short of that limit.

The grounds of appeal in this case were:

"(1) That the assessment is erroneous in law as the said holding is not rateable, it having been exempted for general assessment and education rates by the Ruler-in-Council on May 14, 1951; and alternatively

(2) That even if the holding is rateable the valuation by the council exceeds the rateable value of the holding."

Now to take the second ground of appeal first.

This must be deemed to be an appeal against the rate payable for the year of assessment since the provisions of the statute under which the appeal is filed regards the rate payable for the year of assessments the subject-matter of the appeal. The proviso to section 44(i) of the Town Boards Enactment reads: "Provided that with the presentation of the petition of appeal there shall be paid into court the amount of the rate appealed against."

The first ground of appeal, however, raises an issue of far reaching consequence which goes beyond any particular year of assessment. I think that the test suggested in the judgment of the Privy Council in *Andrew Macfarlane* v. *Francois Leclaire, supra,* applies. In that case their Lordships observed: "that in determining the question of the value of the subject-matter in dispute upon which the right of appeal depended, the proper course was to look at the judgment as to the extent that it affected the interested party prejudiced by it and seeking to relieve himself from it by appeal."

The extent to which the applicants herein are prejudiced by the decision of the Municipal Council is that a holding claimed to be exempt from rating has been declared to be rateable. The financial implication of this decision is incalculable and is certainly prejudicial to the applicants to an extent far in excess of $5,000.

I therefore direct the bill of costs to be taxed on the higher scale.

Order accordingly.

Solicitors: *F. Arulanandon; Lim Cheng Ean & Co.*

NG SEE MOI v. GOVERNMENT OF THE FEDERATION OF MALAYA & ORS.

[O.C.J. (MacIntyre J.) August 2, 1965]

[Ipoh — Civil Suit No. 35 of 1965]

Practice and Procedure — Parties — Application to amend name of defendant — Correction of misnomer — R.S.C. 1957, O. 16 r. 11.

In this case an action had been brought against *inter alia* the Government of the Federation of Malaya. An application was made to amend the name of the defendant to that of the Government of Malaysia. Counsel for the defendant objected on the ground that the claim against the Government had been barred by the Public Authorities Protection Ordinance, 1948. The question for consideration was whether the proposed amendment amounted to an application to correct a misnomer or to substitute a new defendant.

Held: it was quite clear that in this case the defendant had been described as the Government of the Federation of Malaya through sheer inadvertence and therefore the application to amend should be allowed.

Cases referred to:—

(1) *Challinor* v. *Roder & Ors.* (1885), 1 T.L.R. 527.

(2) *W. Hill & Son* v. *Tannerhill* [1944] 1 K.B. 472.

APPLICATION.

C. Navaretnam for the applicant.

Pawan Ahmad bin Ibrahim Rashid (Legal Adviser, Perak) for the respondents.

MacIntyre J.: This is an application to amend the name of the 1st defendant from that of the Government of the Federation of Malaya to that of the Government of the Federation of Malaysia.

The application is made under Order 16 rule 11 of the Rules of the Supreme Court, 1957.

At the hearing of the summons, the learned legal adviser to the Government of Perak appearing on behalf of the Attorney-General objected to the application on the ground that the alleged claim against the Government of the Federation of Malaysia is barred by limitation by virtue of the provisions of section 2(a) of the Public Authorities Protection Ordinance of 1948.

Mr. Navaretnam for the plaintiff submitted that the misdescription of the 1st

defendant's name was made through a *bona fide* mistake and that he was entitled to the order prayed for on the authority of *Challinor* v. *Roder and Others* (1) and *W. Hill & Son* v. *Tannerhill.* (2)

The relevant commentary under Order 16 rule 11 appearing at page 349 of the *Annual Practice* 1962 (Vol. 1) under the sub-title "Mistake as to defendant" reads as follows:

"Leave will be given to amend the name or description of the defendant, where this can be regarded as the correction of a mere misnomer, but leave will be refused if the amendment sought amounts in substance to the addition or substitution of a new defendant against whom the claim is statute barred (*Davies* v. *Elsby Brothers, Ltd.*, [1961] 1 W.L.R. 170; [1960] 3 All E.R. 678, C.A.). The test is whether or not the entity or identity of the defendant remains the same (*ibid., per* Devlin L.J.). *Challinor* v. *Roder* (1885), 1 T.L.R. 527, can no longer be treated as having any authority."

The question for consideration in this case is whether the proposed amendment amounts to an application to correct a misnomer or to substitute a new defendant. Substitution implies the existence of two distinct entities, with one replacing the other. At no time material to the issues in the present case was there any entity known as the Federation of Malaya. There can therefore be no question in this case of substituting one defendant for the other. What is being asked for is the substitution of one name for another for the same entity that had been sued.

The 1st defendant is being sued as the employer of the 3rd defendant. It is not disputed that the name of the employer is the Federation of Malaysia. The address of the 1st defendant is given in the writ as c/o the Attorney-General, Kuala Lumpur. The address is that of the Attorney-General of the Federation of Malaysia. It is quite obvious that the 1st defendant was described as the Federation of Malaya through sheer inadvertence or perhaps in this case through force of habit.

I shall therefore make an order in terms of the prayers in the summons with costs to the 1st defendant.

Application allowed.

Solicitors: *Gibb & Co.*

WONG FATT HENG v. GAMMON MALAYA LTD.

[O.C.J. (Choor Singh J.) August 5, 1965]

[Singapore — Suit No. 1091 of 1964]

Negligence — Damages for personal injuries sustained in road accident — Assessment of damages.

Damages — Leg — Shortening — Pubic rami — Urinary bladder.

This was a claim for damages in respect of personal injuries sustained by the plaintiff in a road accident. The plaintiff aged 21 worked as a mason during the day and a part time goldsmith at night and had a total monthly income of about $400. He sustained the following injuries: (a) compound fracture of the shaft of the left tibia and fibula; (b) fracture of the superior pubic rami on both sides and the left interior pubic ramus on the left side; (c) contusion of the urinary bladder and extra-peritoneal haemorrhage; and (d) minor abrasions. Although (b) and (d) healed without further trouble, injuries from (a) and (c) resulted in permanent disabilities. On the evidence the judge found that the accident was caused solely by the negligence of the defendant's driver. On a question of general damages,

Held: taking into account the permanent disabilities suffered by the plaintiff and the consequences thereof, the loss of amenities, the pain and suffering the plaintiff underwent and the loss of future earning, the general damages should be assessed at $20,000.

Cases referred to:—

(1) *Bird* v. *Cocking & Sons Ltd.* [1951] 2 T.L.R. 1260, C.A.

(2) *L. B. Drennan* v. *R. F. Greer* [1957] M.L.J. 77, C.A.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Cheng Tim Pin for the defendant.

Choor Singh J.: This was a claim for damages in respect of personal injuries sustained by the plaintiff in a road accident on the 22nd November 1963 when he was cycling along Race Course Road in the direction of Rangoon Road in the State of Singapore and was run into and knocked down by motor vehicle No. SP 5600 which was being driven in the same direction by the servant or agent of the defendants.

The plaintiff alleged that the collision was caused solely by the negligence of the servant or agent of the defendants and that by reason thereof he had suffered injuries, had endured pain and had been put to loss and expense. The defendants admitted the said collision between the plaintiff's bicycle and the defendants' motor vehicle No. SP 5600 and admitted further that the said motor vehicle was being driven by their servant or agent but denied the allegation of negligence. The defendants alleged that the said collision was caused or contributed to by the negligence of the plaintiff.

The plaintiff's version of the accident was as follows. On the 22nd November 1963 he was riding his bicycle along Kinta Road in the direction of Race Course Road. On reaching Race Course Road he turned right into Race Course Road and proceeded in the direction of Rangoon Road. There were cars parked on the left side of Race Course Road and he was cycling about two or three feet away from the line of parked cars. As he was about to reach the last car in the line of parked cars, the defendants' Land Rover No. SP 5600 came from behind and rammed into his bicycle. He was thrown from his bicycle and was injured. His bicycle was damaged.

The version of Tan Ah Poh who was driving Land Rover No. SP 5600, the vehicle involved in